

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, ) CASE NO. 3:73-cv-00127-MMD-WGC  
)  
Plaintiff, )  
)  
WALKER RIVER PAIUTE TRIBE, )  
)  
Plaintiff-Intervenor, )  
)  
vs. ) MINUTES OF PROCEEDINGS  
)  
WALKER RIVER IRRIGATION )  
DISTRICT, et al. )  
)  
Defendants. ) DATED: June 3, 2019  
)  
\_\_\_\_\_)

PRESENT: THE HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: Karen Walker REPORTER: Liberty Court Recorder

COUNSEL PRESENT: Andrew Guss Guarino, Tyler J. Eastman, Gordon H. DePaoli,  
Dale E. Ferguson, Wes Williams Jr., Bryan L. Stockton, Christopher Mixon, Theresa A. Ure,  
Nhu Q. Nguyen, Sean A. Rowe and Simeon M. Herskovits

COUNSEL APPEARING BY PHONE: Brad Johnston, Iris Thornton, Miles Krieger,  
Harry Swainston (Pro Se), and James Fousekis (Pro Se)

**MINUTES OF PROCEEDINGS: Status Conference**

10:07 a.m. Court convenes.

The court is in receipt of the proposed agenda (ECF No. 2492) and will follow the discussion points listed on page 2 for today's conference.

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**Agenda item 1:** Minute Order 2483 concerning the Court's receipt of requests for approval of continuation of postcard service, pursuant to the Court's *Order Discontinuing Service by Postcard Notice* (ECF No. 2439).

The court and counsel discuss the process of postcard service and discontinuance of postcard service pursuant to Minute Order (ECF No. 2439). The deadline to complete and opt-out of service by e-mail and continue with postcard service has passed. Since the deadline, nine requests for approval of continuation of postcard service have been filed with the court (ECF Nos. 2442, 2443, 2444, 2445, 2449, 2472, 2474, 2481, and 2482).

IT IS ORDERED that the following motions for postcard service are **GRANTED**:

Murl E. Williams ECF No. 2442;

Swagger (Swauger) Ranch, Inc. ECF No. 2443;

Cheryl L. Goffinet ECF No. 2444;

Lonnie K. Goffinet ECF No. 2445;

Mary Ann Perumean ECF No. 2449;

Ann Marie Gable ECF No. 2472;

Paula S. Westerman ECF No. 2474;

Ted Westerman ECF No. 2481; and

TPKW Family LP ECF No. 2482

**Agenda item 2:** Minute Orders 2484, 2485, 2486, and 2487 concerning the process for substitution of parties (or requests to be removed from email notifications).

Requests for substitution of parties or request to be removed from e-mail notifications have been filed with the court (ECF Nos. 2334, 2453, 2458, 2460 and 2475).

The court takes a brief recess for the parties to attend a hearing before District Judge Miranda Du.

1 The court and counsel reconvene and a discussion with counsel regarding recent filings  
2 are still referred to as the C-125 case. The court reminds counsel that a decision was made that  
3 all future filings for the case are to be referred as 3:73-cv-127-MMD-WGC.  
4

5 The court and counsel continue with Agenda item 2 discussing the process of substitution  
6 of parties. The court expresses concern that the most recent order may not satisfactorily resolve  
7 the information needed. In addition, Order (ECF No. 1650) is outdated as to the information it  
8 requires. The court is also concerned that the revised Orders (ECF No. 2432 and 2428), based  
9 upon the parties' suggestion, does not contain the required information regarding a substitution.  
10 Mr. Guarino suggests the parties hold a meet and confer conference to address this topic and  
11 come up with a proposed order. The parties agree to formulate appropriate language and forms  
12 regarding substitution of a party as a result of a transfer. The court agrees with Mr. Guarino's  
13 suggested approach and no objections made.  
14

15 IT IS ORDERED that the principle parties meet and confer and submit a proposed order  
16 for the court consideration regarding protocol for substitution of a party.  
17

18 IT IS FURTHER ORDERED that a decision on the request for substitution of parties or  
19 request to be removed from e-mail notifications (ECF Nos. 2334, 2453, 2458, 2460 and 2475)  
20 are deferred until an appropriate order resolving the issue is approved by the court.  
21

22 **Agenda item 3:** Minute "Represented Party," to continue as an "Unrepresented Party," if  
23 they so desire, by receiving notice by email, but without acting pro se, in  
24 light of the fact that the Case Management Order, Doc. No. 108, expressly  
25 provides that no defaults will be taken, as does the Scheduling Order, ECF  
26 2437. This issue is raised by Minute Order ECF 2491.

27 Defense counsel Gordon H. DePaoli advises that due to the delay or length of time when  
28 parties were served and when they appeared, some parties who are represented may choose to  
become unrepresented and simply just follow the status of the case. Given the fact that all the

1 orders provide that no defaults can be taken on unrepresented parties, the court should allow this  
2 to happen. If the party becomes unrepresented, that party should be required to provide an e-  
3 mail address to receive notice. If they don't provide an e-mail, the party is deemed to have  
4 notice and would be required to review the website periodically of current information in the  
5 case. If the unrepresented party wants to file in the case, and if they are an entity, they would be  
6 required to do so through an attorney.  
7

8 The court entered a previous Order (ECF No. 2491) as to Mica Farms not permitting  
9 counsel to withdraw. Pursuant to Mr. DePaoli statement to the court, the order should have  
10 granted Mica Farms to monitor the case unrepresented. Theresa Ure advising the court that a  
11 previous motion was filed back in 2009 (ECF No. 1536) and an order (ECF No. 1544) was  
12 issued allowing counsel to withdraw for a party. The court, at that time, advised the party it was  
13 not going to put the burden on the attorney to find counsel for that particular entity. The court  
14 further stated if the entity wanted to participate in the case by filing motions or other documents,  
15 the entity would have to do so through counsel.  
16  
17

18 The court reviews the proposed order attached to the motion (ECF No. 2489-1). The  
19 proposed order grants the motion allowing Mica Farms to be listed as an unrepresented party and  
20 to receive e-mail at a certain AOL address. Ms. Ure motions the court for reconsideration of the  
21 court's previous order (ECF No. 2491). No objections were made by the parties.  
22

23 IT IS ORDERED that the motion for reconsideration to withdraw as counsel for Mica  
24 Farms, LLC is **GRANTED**. The court **VACATES** order ECF No. 2491 and will enter the  
25 proposed order ECF No. 2489-1. Cathe Faretto to be added to the service list for Mica Farms,  
26 LLC at [cathefaretto@aol.com](mailto:cathefaretto@aol.com).  
27  
28

1 IT IS FURTHER ORDERED that the principle parties also meet and confer to further  
2 discuss Agenda item 3 with Agenda item 2 as it relates service when counsel withdraws, or a  
3 successor trustee receives service.  
4

5 **Agenda item 4:** Discussion of whether the Walker River Irrigation District and the Nevada  
6 Division of Water Resources may discontinue providing information to  
7 the United States and Walker River Tribe concerning changes in  
ownership of water rights now that service is complete.

8 Mr. DePaoli advises that when the case management order was issued in 2000 the district  
9 and others were directed to provide information identifying new ownership of water rights. In  
10 the amended order concerning service issues (ECF No. 1650), Walker River Irrigation District,  
11 the Nevada State Engineer and the California Water Resources Control Board was ordered to  
12 regularly provide updated water right ownership information to the court and plaintiff parties.  
13 The purpose of the information was to provide notice of pending proceedings to any new water  
14 right owners. This information has been provided until 2016 when the case went up to the Ninth  
15 Circuit. The information was not provided to the court at any time. Considering the order that  
16 the case can continue against the original defendants and given the recent status of ending  
17 service and procedure of substitution of the parties, Mr. DePaoli requests an order to discontinue  
18 the obligation to provide updated water right ownership information. The Government and  
19 Walker River Paiute Tribe concur with Mr. DePaoli's request to the court and no objections were  
20 made by any other party.  
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22  
23

24 IT IS ORDERED that the parties prepare a separate order eliminating paragraph 5, on  
25 page 8, of Judge Leavitt's order (ECF No. 1650) alleviating the responsibility of Walker River  
26 Irrigation District, the Nevada State Engineer and the California Water Resources Control Board  
27 to provide updated new water rights ownership information.  
28

**Agenda item 5:** Such additional issues that may be identified subsequent to the filing of this agenda and/or at the status conference.

No additional issues discussed during today's conference.

**Agenda item 6:** Based upon the discussion of Agenda Items 1 through 5, determination of the next steps to be taken with respect to the remaining litigation.

A plan of action has been discussed to take care of the substitution of the parties. The Court will enter an order regarding the oral motion for reconsideration to withdraw as counsel for Mica Farms, LLC as addressed in Agenda item 3.

**Agenda item 7:** Confirmation of next status conference and/or informal meetings.

IT IS ORDERED that a status conference is scheduled for **Wednesday, August 7, 2019, at 10:00 a.m.**, in Reno Courtroom 2 before United States Magistrate Judge William G. Cobb. Mr. Guarino agrees to prepare the agenda of items to discuss at the next status conference. Agenda for the status conference to be submitted on or before, **Friday, August 2, 2019.**

Although counsel for the principal parties are encouraged to attend the conference in person, counsel who are located outside of the Reno, Nevada area may participate telephonically. Out of town counsel shall dial **1-888-557-8511**, enter the access code **3599743**, and enter the security code **80719**, approximately ten (10) minutes prior to the hearing.

There being no additional matters to address at this time, court adjourns at 1:41 p.m.

DEBRA K. KEMPI, CLERK OF COURT

By:                                 /s/                                  
Karen Walker, Deputy Clerk